



July 18, 2000

Ms. R. Yvette Clark  
General Counsel  
Stephen F. Austin State University  
P.O. Box 13065, SFA Station  
Nacogdoches, Texas 75962-3065

OR2000-2705

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137150.

Stephen F. Austin State University (the "university") received a request for information relating to a recent invitation to bid. You have submitted the responsive information to this office.<sup>1</sup> The university does not raise any exception to public disclosure of the requested information. You inform us that the university will rely on the vendors who submitted the information to the university to claim protection for any information that any of them may claim is proprietary.<sup>2</sup>

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<sup>1</sup>We note that in submitting the requested information, the university failed to comply with section 552.301(e) of the Government Code. Section 552.301(e) provides in relevant part that "[a] governmental body that requests an attorney general decision under Subsection (a) of [section 552.301] must . . . not later than the 15<sup>th</sup> business day after the date of receiving the written request [for information] . . . submit to the attorney general . . . a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]" Gov't Code § 552.301(e)(1)(D). Failure to comply with section 552.301 in requesting an attorney general decision raises a presumption that the information requested in writing is subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of that information from the public. *See* Gov't Code § 552.302. In order to protect its own interests and those of other affected parties, the university should ensure in the future that it complies fully and timely with section 552.301 in seeking an attorney general decision under the Public Information Act.

<sup>2</sup>Section 552.110 protects the proprietary interests of private parties by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information for which it is demonstrated, based on specific factual evidence, that disclosure would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a), (b); Open Records Decision No. 552 at 2 (1990).

Section 552.305 of the Government Code provides in relevant part that if release of a private party's proprietary information may be subject to exception under section 552.110, a governmental body must make a good-faith effort to notify that party of its right to submit reasons why such information should be withheld from disclosure. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 at 2-3 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). You inform this office that the university provided the notice required by section 552.305(d) to all of the vendors whose submitted information may be affected. Each of those parties had ten business days in which to submit to this office that party's arguments, if any, as to why requested information relating to that party represents or contains information that is protected by section 552.110. *See* Gov't Code § 552.305(d)(2)(B). None of the affected parties timely responded to the university's notice. Therefore, the requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ljp

Ref: ID# 137150

Encl. Submitted documents

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